Office-Supreme Court, U.S.
FILED
JUN. 6 1962
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 1017

PACIFIC MARITIME ASSOCIATION,
Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, et al.,
Respondents.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION,
Cross-Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION, AND UNITED STATES OF AMERICA,
Cross-Respondents.

Memorandum of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association in Response to Petition for Writ of Certiorari and Cross-Petition of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Cross-Petition of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

The Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, hereafter called Marine Firemen's Union, files this memorandum in response to the petition

of Pacific Maritime Association for a writ of certiorari, and in addition herewith cross-petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Circuit in this proceeding insofar as it affirms the supplementary order issued by the district court.

OPINIONS BELOW

The opinion of the court below has not been reported, and is printed in full at pp. 33-49, Appendix B of the Petition of Pacific Maritime Association. The memorandum opinion of the district court also has not been reported, and is printed at pp. 16-28, Appendix B of the Petition of Pacific Maritime Association.

JURISDICTION

The judgment of the court below (P.M.A. Pet. App. B, p. 49)[1] was entered on May 29, 1962. No petition for rehearing has been filed at the time of the preparation of this cross-petition. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1), and under Section 208(c), of the National Labor Relations Act, as amended (29 U.S.C. 178(c)), hereafter called the Act.

QUESTIONS PRESENTED

The question presented by the petition of Pacific Maritime Association may be stated as follows:

Whether the national emergency provisions of the Act authorized the district court to issue a supplemental order

1 References to the proceedings in the district court and the court below which have been printed in the Appendix to Pacific Maritime Association's petition are hereafter designated "P.M.A. Pet. App." References to the original record on file with the Court are designated "R", and are to the page numbers appearing in ink at the bottom center of each page. References to the transcript of oral proceedings are designated "Tr.", and by the date of the proceedings and page.

restraining strike activity during the period which follows the discharge of the principal injunction because, in the opinion of the court, such order would insure a resumption of full business operations during the period of the principal injunction.

The question presented by the cross petition may be stated as follows:

Whether the district court was authorized, in the exercise of its national emergency injunction powers under the Act, to prescribe a form of shipping articles for execution by seamen who sail during the period of the injunction which expressly precludes them from resuming strike activity for a period of time upon their return to American ports following the discharge of the injunction.

STATUTES INVOLVED

The relevant provision of the Act are printed at pp. 1-8, Appendix A to Pacific Maritime Association's petition.

STATEMENT

A. The Maritime Strike, and the Issuance of the Restraining Order Under the National Emergency Provisions of the Act.

This case arises out of a strike begun on March 16, 1962, instituted by the unlicensed seagoing personnel of the west coast maritime industry to obtain a new collective bargaining agreement. The strike followed unsuccessful negotiations between Pacific Maritime Association, on behalf of the shipowners, and three labor organizations representing the employees,[2] after the expiration on October 31, 1961, of the most recent agreement between them (R. 5, 139, 146).

2 All three organizations, which bargain together as Seafarers International Union of North America, Pacific District, are named as respondents in Pacific Maritime Association's petition. These organizations are collectively referred to herein as the Unions.

The strike took hold piecemeal, initially affecting only vessels which were in American ports on March 16, 1962, and thereafter tying up additional vessels as they returned to American ports from voyages on the high seas. On April 7, 1962, the President of the United States issued an Executive Order declaring that the strike affected a substantial part of the maritime industry, and that if permitted to continue would imperil the national health and safety (R. 11). This order set in motion the procedures under the national emergency provisions of the Act for the issuance of an injunction against continuance of the strike. Following compliance with the remaining procedural requirements, a temporary restraining order was applied for and obtained by the Government on April 11, 1962 (R. 12-25). Hearing upon the application for a preliminary injunction was set for April 16, 1962 (Tr. April 14, p. 148).

B. The Controversy Over the Duration of Shipping Articles Executed During the Injunction Period.

The application for the restraining order was made in open court with counsel for all parties present. In the course of the proceedings, counsel for the Marine Firemen's Union raised the question of whether, under the order, "the men must sign aboard vessels and sign [shipping] articles requiring the performance of services beyond the period of 80 days" (the maximum duration of injunction relief under Section 209 of the Act) (Tr. April 11, p. 13).

Shipping Articles constitute an agreement between the master of a vessel and the individual seamen which fixes certain aspects of their relationship during a voyage. The Articles expressly subject the seamen to the discipline of the master, and make provision for such matters as "the duration of the intended voyage or engagement," the "respective employments" of the crew, the time for report

ing on board, the "amount of wages which each seaman is to receive," a "scale of the provisions which are to be furnished," and "any regulations as to conduct on board." Title 46, U.S.C. Section 564. Shipping Articles must be signed for certain voyages specified by statute, and it has been customary for such Articles to be executed in most, if not all voyages covered by the collective bargaining contract between P.M.A. and the maritime unions representing the employees of its members (P.M.A. Pet., App. B, 34-35 n. 1). The practice has been to specify a term of not more than nine months for Shipping Articles (*id.* at 35). As further explained in an affidavit of William J. Jordan, president of the Marine Firemen's Union (R. 78-79):

> "The duration of the voyages on which the seamen sail is ordinarily much less than the term of the Shipping Articles, and it is the usual practice of the shipping companies to terminate the Shipping Articles at the completion of a foreign voyage. When such employees remain on board the vessel and sail on a subsequent voyage, new Shipping Articles are signed, again for a term of time not exceeding nine calendar months. Upon return of a ship after a foreign voyage it is the practice of the shipping companies to pay off the seamen as soon thereafter as practicable. When a vessel arrives back at an American port at the termination of a voyage where the Articles are to be terminated, the seamen are paid off all wages and moneys due them upon discharge of the Shipping Articles and sign new Shipping Articles before departing for another voyage."

Although the question as to the term of Shipping Articles to be executed during the period of the injunction was discussed upon application for the restraining order, as stated above, the matter was not resolved (Tr. April 11, pp. 13-16, 26-29, 41-45, 50). The order enjoined in con-

ventional terminology continuation of the strike, interference in an "orderly resumption" of work, and required the striking Unions to instruct their members "to resume their normal employment" (R. 64-67).

Following issuance of the restraining order, the Unions notified the strikers to return to their ships, and preparations were made for sailing (Tr. April 13, 85-86). When the seamen were presented with Shipping Articles for terms of nine months, however, many declined to sign. Their refusal was in accordance with the advice given by the Unions that they were not required by the restraining order to commit themselves not to resume strike action, if the contract dispute remained unsettled, after the expiration of 80 days and return of their vessels to an American port. The Union further provided the seamen with a written rider to the Articles which expressly permitted termination of the Articles "in the event the vessel is in a U. S. port and a bona fide strike or work stoppage occurs and the vessel is involved in such strike or work stoppage" (Tr. April 13, p. 14).[3] The seamen informed their masters that Shipping Articles of conventional term would be executed if the rider were adopted as a part of the Articles.

In consequence of the seamen's position as to Shipping Articles, Pacific Maritime Association applied on April 13, 1962, to the district court for a supplemental order which would have expressly assured the execution of Shipping

3. The language of the rider was taken from an agreement which had been in effect between the American President Lines, a member of P.M.A., and the Marine Firemen's Union during an earlier strike in which that Union was not directly involved (Tr. April 13, 82-83). Pacific Maritime Association and the Unions had also agreed in negotiations following expiration of their most recent contract that provision would be made in their new contract, if overall agreement could be reached, for termination of Articles in the event of a strike situation. (*ibid.*)

Articles purporting to bind the seamen to continue work for periods of time after their return to American ports after the expiration of the injunction period. A hearing was held the same day, at the conclusion of which the district court, at the request of counsel for the Government, entered Findings of Fact and Conclusions of Law, and a Preliminary Injunction in substantially the same form as the restraining order (P.M.A. Pet. App. B, pp. 13-15, Tr. April 13, 126-127, 133, 142). The district court further scheduled April 16, 1962, for hearing upon "any and all proposals concerning a supplemental order to be made herein" (*id.* p. 148).

C. The Supplementary Order of April 18, 1962, and the Denial of the Marine Firemen's Union's Motion to Modify the Preliminary Injunction.

Two applications were made at the hearing of April 16, 1962. Pacific Maritime Association requested the district court to issue a supplemental order substantially the same as that which had been proposed on April 13, and which would have the effect of requiring the seamen to continue work after the expiration of the injunction period until all cargo had been discharged and their vessels berthed according to their employer's wishes at American ports on return from voyages begun during the injunction period. The Marine Firemen's Union, on the other hand, requested that the preliminary injunction be amended to include provisions which would protect the right of the striking employees to resume strike action at American ports after the discharge of the preliminary injunction, even though cargo had not been unloaded (R. 76-77). In addition, the Marine Firemen's Union requested that the district court restrain sailings on voyages, more than one-half of which would occur after the expiration of the 80-day period of the injunction, on the ground that encroachment upon the

right to resume strike activity in such situations outweighed the interest in enjoining strike activity during the 80-day period (R. 77).

On April 18, 1962, the district court issued its supplementary order and memorandum opinion in which it denied the application of the Marine Firemen's Union, and granted substantially all of the relief requested by Pacific Maritime Association. The supplementary order enjoined the Unions from "insisting, demanding or requesting that the shipping articles" be restricted in any way that would allow seamen to leave their jobs "prior to the time that the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its safe mooring should there be a resumption of strike activity"; from interfering with the "orderly sailing of vessels or schedule for their normal voyage to completion of the work as hereinbefore set forth"; to direct seamen to sign on "normal shipping articles", without "limiting their employment to a period of eighty (80) days"; and to "furnish the necessary replacements for crew members, so that any vessel sailing pursuant to the provisions of the preliminary injunction can, without interference by strike activity, continue to operate until all cargo loaded . . . is discharged and delivered and the vessel is shifted to an appropriate and safe berth as directed by the employer" (P.M.A. Pet., App. B, pp. 29-30). In addition, the supplementary order provided that the Shipping Articles should "terminate and expire upon the completion of the voyage in the manner provided" by the order, and that a photostatic copy of the order should be "affixed to the said articles" (*id.* pp. 30-31).

D. The Decision of the Court Below.

On appeal to the court below, the supplementary order of the district court was affirmed, except as to its provisions

which purported directly to restrain the prosecution of strike activity by the Union during the period following discharge of the preliminary injunction. The court below remanded the proceedings to the district court for the single purpose of adding to the order "a provision terminating this order upon the discharge of the injunction" (P.M.A. Pet. App. B, p. 18a).

The court expressly rejected Pacific Maritime Association's contention that Section 301 of the Act, in authorizing district courts to "make such other orders as may be appropriate", contemplated the issuance of orders effective after the discharge of the preliminary injunction. The decision below reasons that this "ancillary power was not a grant of 'a separate equitable jurisdiction which would be free of the restraints, including the restraint as to duration, imposed on the issuance of the basic injunction'" (*ibid.*, fn. 11). This conclusion is not affected in the court's view by the possibility that "such extended duration ... would be necessary in order to obtain a full adjudication of the matters during the eighty-day period" (*ibid.*).

With respect to the provisions of the order of the court below which prescribed the form of disclosure to be made by the seamen were to execute during the period of the injunction, the court below stated (*id.* at p. 11a):

> "It is nevertheless true that the subsequent order employs imperative language to effect a separation of shipping articles which contractually bind the seamen to serve for periods which may extend far beyond the eighty-day But since these are the kind of articles the seamen were signing immediately prior to the calling of the strike, the provisions in question do no more than maintain the *status quo*. This, as we have held, is permissible under Section 13(b), and is that required to effectuate the Congressional purpose."

Finally, the court below held, "On the same reasoning ... that the [district] court did not err in refusing to modify the injunction to prohibit sailings where less than half of the voyage would occur before the eightieth day (*id.* p. 45).[1]

RESPONSE TO THE PETITION OF PACIFIC MARITIME ASSOCIATION

The petition of Pacific Maritime Association does not appear to present a substantial question of statutory construction or application. As pointed out by the court below, "The statutory limitation upon the duration of injunctions issued under the Act is spelled out in words of command. Only such production as may be compelled by injunctive sanctions limited to eighty days, may be achieved either under the injunction or any order supplemental thereto" (P.M.A. Pet., App. B, p. 44). It may be added that the legislative history of the national emergency injunction provisions of the Act fully supports this conclusion. Senator Taft, in explaining the measure on the floor of the Senate, stated that the Senate Labor Committee, whose bill became law, had rejected proposals which would have provided for more stringent regulation. The Committee had reasoned that (Vol. 2, Leg. Hist. of Labor Management Relations Act, (G.P.O., 1948), p. 1008):

> "Eighty days will provide plenty of time within which to consider the possibility of what should be done; and we believe very strongly that there should not be anything in this law which prohibits finally the right to strike."

In the last analysis, the contrary contentions advanced in the memorandum opinion of the district court and by

1. Cross-petitioner does not seek review by this Court of the determination of the court below on this phase of the case.

Pacific Maritime Association are supported only by considerations of economic policy. As this Court has had occasion to note, however, there has already been a congressional determination of the policy factors involved in the national emergency injunction provisions of the Act, and this determination "is of course binding on the courts." *United Steelworkers of America v. United States*, 361 U.S. 39, 41.

We do not deny, however, that the question presented by Pacific Maritime Association's petition is of substantial practical importance to the operation of the west coast maritime industry during the period of the present injunction, and in obtaining cargoes on return trips to this country during the post injunction period. It is manifestly desirable, moreover, that all questions presented in a proceeding of this nature be determined by the Court in the event certiorari is granted on any part of the case. In these circumstances, in and in view of the cross-petition herein, we do not oppose the granting of the petition of Pacific Maritime Association if the cross-petition is also granted.

REASONS FOR GRANTING THE CROSS-PETITION

1. In determining that the supplementary order of the district court must be dissolved upon discharge of the preliminary injunction, the court below has recognized that the Unions are thereafter free, insofar as the national emergency provisions of the Act are concerned, to resume strike action. In affirming provisions of the supplementary order which prescribe the form of shipping Articles to be executed by seamen during the period of the injunction, however, the court below has placed the Unions in a position where they have individually committed themselves not to resume strike action at the end of that time. Such

unions are apparently free to direct it. This dilemma creates problems which have a direct and perhaps controlling influence upon the possible resumption of strike activity, should there be no settlement of the contract dispute during the remainder of the injunction period.

Thus, picketing at docks where vessels return after the discharge of the injunction, an activity which is not prohibited by the decision below, might well prompt seamen to decline to continue work. In the event that their Shipping Articles have not been terminated, respect for such a picket line may raise most serious questions of forfeiture and other penalties. See, e.g., 46 U.S.C. Sections 596, 701; cf., *Southern Steamship Co. v. N.L.R.B.*, 316 U.S. 31. Questions may also be raised with respect to the legal propriety of union activity which has the effect of inducing a refusal to work prior to the termination of shipping articles. The problems which thus relate to resumption of strike activity are in large measure the consequence of the supplementary order of the district court and the decision of the court below. Thus, the Unions have been placed in a position where they must make a judgment, in the event a contract settlement is not reached, respecting the resumption of a strike which has been determined to affect the national health and safety, in circumstances where they are judicially informed that they are free to strike, but their members are in effect judicially required to waive the right to join such a strike until specified work has been completed. We submit this judgment should be made with the benefit and in the light of this Court's determination of the validity of the district court's regulation of the dispute in its supplementary order.

2. The decision of the court below, insofar as it affirms the district court's regulation of shipping articles, raises a substantial question as to the scope of the authority of

district courts under the national emergency injunction provisions of the Act. Direct judicial encroachment upon the right of individual employees to engage in strike activities, as reflected in the supplementary order, cannot be reconciled with the statutory limitation upon judicial sanctions against resumption of strike action by the unions which represent such employees. There is nothing in the provisions of the Act involved in this case which authorizes this kind of limitation upon resumption of strike activity after the statutory 80-day period. On the contrary, this Court has had occasion to caution that Section 13 of the Act, which expressly protects strike action where not "specifically" restricted, "is a command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of [other provisions] which safeguards the right to strike as understood prior to the passage of the Taft Hartley Act". *N.L.R.B. v. Teamsters Local*, 362 U.S. 274, 282.

The court below would justify its ruling on the ground that Shipping Articles which are not terminated until after discharge of cargo are customary in the maritime industry, and that the supplementary order in this respect simply

3. It cannot seriously be questioned that the supplementary order places seamen who work during the period of the injunction under compulsion to execute Shipping Articles that commit them to continue working after the discharge of the preliminary injunction, until all cargo on vessels sailing under protection of the injunction has been unloaded and the vessels secured at a berth of the employer's choice. Paragraph 3 of the order specifies that the Articles "executed by the seafarer" shall "expire upon the completion of the voyage in the manner particularly provided for in paragraph '2' hereof." Paragraph 2 of the order directs the unions to instruct their seamen to "sign on normal shipping articles". Paragraph 1 of the order makes clear that "normal" Articles, in the circumstances of this case, comprehend a term that expires after "the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its safe mooring." P.M.A. Pet. App. B, pp. 29-30.

maintains the *status quo*. (P.M.A. Pet., App. B, pp. 41, 45). To the extent that maintenance of the *status quo* is a relevant consideration in this kind of case, however, it can only pertain to duties to be performed during the period of the injunction not to commitments which mature during the post-injunction period. The provisions of the injunctive relief granted by the district court which contemplate the continuance of work under terms and conditions in effect prior to the injunction are not questioned; the defect of the supplementary order is in its regulation of post-injunction terms and conditions. Moreover, it is scarcely meaningful to refer to the touchstone of "normal" Shipping Articles in the abnormal situation where the seamen and their unions are seeking to clarify their rights upon the dissolution of a national emergency injunction. It is not suggested that the statutory law which governs shipping articles prohibits a duration clause that would afford the protection sought by the employees in this case. The term of Shipping Articles is a matter left to the resolution of the seaman and his master. There is nothing in the Act that supports judicial insistence upon a term that outlasts the restricted measure of injunctive relief which the courts may impose.

3. The lapse of the remaining period of the preliminary injunction will not moot the question presented herein. The effect of the Shipping Articles, insofar as questioned by the cross-petition, will be felt only in the post-injunction period. Thus, as seamen return to American ports after the dissolution of the injunction, they will not be free under their Articles to rejoin the strike, if it is resumed, until their vessel's cargo has been discharged and the vessel has been moved to a berth specified by the employer. Vessels do not ordinarily discharge all cargo at a single port, but upon

return from a foreign voyage will stop at several destinations for unloading. Since voyages begun during the period of the injunction may range up to three and four months in duration, it is apparent that the practical effect of the supplementary order may not be dissipated until September or October. It would then, however, be too late for this Court effectively to review the supplementary order.[6]

In short, there is in this case only an alternative between immediate review of the questions presented and no review. As shown, the question presented by the cross petition has both practical importance relating to the resumption of strike activity of far-reaching scope, and legal importance in terms of clarifying the scope of national emergency injunctive powers of the district courts. Review by this Court is accordingly warranted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the cross petition for writ of certiorari should be granted, and if granted, that Pacific Maritime Association's petition similarly should be granted.

June 5, 1962.

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6. Seamen have sailed under the shipping articles prescribed by the district court since the issuance of the supplementary order, and will continue to do so while the present case is before this Court. This circumstance, however, does not preclude implementation by this Court of a determination that the supplementary order is invalid. An appropriate order may be entered upon direction of this Court that will undo the effects of the invalidity.